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11 IN THE UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

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14 FIVESTAR GOURMET FOODS, INC.,
Plaintiff,

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v.

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17 LOCAL BOUNTI CORP.,
Defendant.

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Case No. 5:23-cv-01653-SSS-SPx

**STIPULATED PROTECTIVE
ORDER**

District Judge: Hon. Sunshine Suzanne
Sykes

Magistrate Judge: Sheri Pym

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1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that
8 the protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles. The parties further acknowledge, as set forth in Section 13.3, below,
11 that this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from
14 the court to file material under seal.

15 **2. GOOD CAUSE STATEMENT**

16 This action is likely to involve customer and pricing lists and other valuable
17 research, development, commercial, financial, technical and/or proprietary
18 information for which special protection from public disclosure and from use for any
19 purpose other than prosecution of this action is warranted. Such confidential and
20 proprietary materials and information consist of, among other things, confidential
21 business or financial information, information regarding confidential business
22 practices, or other confidential research, development, or commercial information
23 (including information implicating privacy rights of third parties), information
24 otherwise generally unavailable to the public, or which may be privileged or otherwise
25 protected from disclosure under state or federal statutes, court rules, case decisions,
26 or common law. Accordingly, to expedite the flow of information, to facilitate the
27 prompt resolution of disputes over confidentiality of discovery materials, to
28 adequately protect information the parties are entitled to keep confidential, to ensure

1 that the parties are permitted reasonable necessary uses of such material in preparation
2 for and in the conduct of trial, to address their handling at the end of the litigation,
3 and serve the ends of justice, a protective order for such information is justified in this
4 matter. It is the intent of the parties that information will not be designated as
5 confidential for tactical reasons and that nothing be so designated without a good faith
6 belief that it has been maintained in a confidential, non-public manner, and there is
7 good cause why it should not be part of the public record of this case.

3. DEFINITIONS

3.1 “Discovery Material” means all items or information, including from any non-party, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced, disclosed, or generated in connection with discovery or Rule 26(a) disclosures in this case.

3.2 “Outside Counsel” means (i) outside counsel who appear on the pleadings as counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is reasonably necessary to disclose the information for this litigation.

3.3 “Party” means any party to this case, including all of its officers, directors, employees, consultants, retained experts, and outside counsel and their support staffs.

3.4 “Producing Party” means any Party or non-party that discloses or produces any Discovery Material in this case.

3.5 “Receiving Party” means any Party who receives Discovery Material from a Producing Party.

3.6 “Confidential Material” means any material that a Designating Party in good faith believes (i) is not in the public domain (i.e., not generally known and not reasonably ascertainable by proper means) and (ii) contains trade secrets or other proprietary or confidential research, development, marketing, financial, technical, or commercial information.

3.7 “Highly Confidential - Attorneys’ Eyes Only Material” means any material that the Designating Party in good faith believes would cause direct harm to the competitive position of the Designating Party if such Highly Confidential information were to be disclosed or is so competitively sensitive that its disclosure could materially affect the business, commercial or financial interests of the Designating Party.

3.8 “Protected Material” means any Discovery Material that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYE ONLY” as provided for in this Order. Protected Material shall not include: (i) advertising materials that have been actually published or publicly disseminated; and (ii) materials that show on their face they have been disseminated to the public.

4. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

5. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

6. DESIGNATING PROTECTED MATERIAL

6.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

6.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 6.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend") or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" (hereinafter "AEO legend"), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection,

1 the Producing Party also must clearly identify the protected portion(s) (e.g., by
2 making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and before
6 the designation, all of the material made available for inspection shall be deemed
7 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." After the inspecting
8 Party has identified the documents it wants copied and produced, the Producing Party
9 must determine which documents, or portions thereof, qualify for protection under
10 this Order. Then, before producing the specified documents, the Producing Party must
11 affix the "CONFIDENTIAL legend" or "AEO legend" to each page that contains
12 Protected Material. If only a portion or portions of the material on a page qualifies for
13 protection, the Producing Party also must clearly identify the protected portion(s)
14 (e.g., by making appropriate markings in the margins).

15 (b) for testimony given in depositions that the Designating Party identify the
16 Disclosure or Discovery Material on the record, before the close of the deposition all
17 protected testimony.

18 (c) for information produced in some form other than documentary and for any
19 other tangible items, that the Producing Party affix in a prominent place on the exterior
20 of the container or containers in which the information is stored the legend
21 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYE ONLY." If only a
22 portion or portions of the information warrants protection, the Producing Party, to the
23 extent practicable, shall identify the protected portion(s).

24 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
25 to designate qualified information or items does not, standing alone, waive the
26 Designating Party's right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable
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1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
5 of confidentiality at any time that is consistent with the Court's Scheduling Order.

6 7.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
7 process under Local Rule 37.1 et seq.

8 7.3 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Frivolous challenges, and those made for an improper purpose
10 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
11 expose the Challenging Party to sanctions. Unless the Designating Party has waived
12 or withdrawn the confidentiality designation, all parties shall continue to afford the
13 material in question the level of protection to which it is entitled under the Producing
14 Party's designation until the Court rules on the challenge.

15 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 8.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this
18 Action only for prosecuting, defending, or attempting to settle this Action. Such
19 Protected Material may be disclosed only to the categories of persons and under the
20 conditions described in this Order. When the Action has been terminated, a Receiving
21 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a
23 location and in a secure manner that ensures that access is limited to the persons
24 authorized under this Order.

25 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
26 ordered by the court or permitted in writing by the Designating Party, a Receiving
27 Party may disclose any information or item designated "CONFIDENTIAL" only to:
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1 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to
3 disclose the information for this Action;

4 (b) the officers, directors, and employees of the Receiving Party to whom
5 disclosure is reasonably necessary for this Action;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
7 is reasonably necessary for this Action and who have signed the "Acknowledgment
8 and Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
12 to whom disclosure is reasonably necessary for this Action and who have signed the
13 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information;

16 (h) during their depositions, witnesses, and attorneys for witnesses, in the
17 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
18 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
19 not be permitted to keep any confidential information unless otherwise agreed by the
20 Designating Party or ordered by the court. Pages of transcribed deposition testimony
21 or exhibits to depositions that reveal Protected Material may be separately bound by
22 the court reporter and may not be disclosed to anyone except as permitted under this
23 Stipulated Protective Order; and

24 (i) any mediator or settlement officer, and their supporting personnel, mutually
25 agreed upon by any of the parties engaged in settlement discussions.

26 8.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
27 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in
28 writing by the Designating Party, a Receiving Party may disclose any information or

1 item designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" only
2 to:

3 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
4 employees of said Outside Counsel of Record to whom it is reasonably necessary to
5 disclose the information for this Action;

6 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure
7 is reasonably necessary for this Action and who have signed the "Acknowledgment
8 and Agreement to Be Bound" (Exhibit A);

9 (c) the court and its personnel;

10 (d) court reporters and their staff;

11 (e) professional jury or trial consultants, mock jurors, and Professional Vendors
12 to whom disclosure is reasonably necessary for this Action and who have signed the
13 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (f) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information; and

16 (g) any mediator or settlement officer, and their supporting personnel, mutually
17 agreed upon by any of the parties engaged in settlement discussions.

18 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
19 **IN OTHER LITIGATION**

20 If a Party is served with a subpoena or a court order issued in other litigation
21 that compels disclosure of any information or items designated in this Action as
22 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
23 ONLY," that Party must:

24 (a) promptly notify in writing the Designating Party. Such notification shall
25 include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to
27 issue in the other litigation that some or all of the material covered by the subpoena

1 or order is subject to this Protective Order. Such notification shall include a copy of
2 this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by
4 the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any information designated in this action
7 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
8 ONLY” before a determination by the court from which the subpoena or order issued,
9 unless the Party has obtained the Designating Party’s permission. The Designating
10 Party shall bear the burden and expense of seeking protection in that court of its
11 confidential material and nothing in these provisions should be construed as
12 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
13 directive from another court.

14 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
15 **PRODUCED IN THIS LITIGATION**

16 (a) The terms of this Order are applicable to information produced by a Non-
17 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” Such information produced by
19 Non-Parties in connection with this litigation is protected by the remedies and relief
20 provided by this Order. Nothing in these provisions should be construed as prohibiting
21 a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to produce
23 a Non-Party’s confidential information in its possession, and the Party is subject to an
24 agreement with the Non-Party not to produce the Non-Party’s confidential
25 information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party that
27 some or all of the information requested is subject to a confidentiality agreement with
28 a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
2 Order in this Action, the relevant discovery request(s), and a reasonably specific
3 description of the information requested; and

4 (3) make the information requested available for inspection by the Non-Party,
5 if requested.

6 (c) If the Non-Party fails to seek a protective order from this court within 14
7 days of receiving the notice and accompanying information, the Receiving Party may
8 produce the Non-Party's confidential information responsive to the discovery request.
9 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
10 any information in its possession or control that is subject to the confidentiality
11 agreement with the Non-Party before a determination by the court. Absent a court
12 order to the contrary, the Non-Party shall bear the burden and expense of seeking
13 protection in this court of its Protected Material.

14 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
16 Protected Material to any person or in any circumstance not authorized under this
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
18 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
19 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
20 persons to whom unauthorized disclosures were made of all the terms of this Order,
21 and (d) request such person or persons to execute the "Acknowledgment and
22 Agreement to Be Bound" that is attached hereto as Exhibit A.

23 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL**

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
28 Procedure 26(b)(5)(B).

13. MISCELLANEOUS

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

13.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

14. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing

1 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
2 reports, attorney work product, and consultant and expert work product, even if such
3 materials contain Protected Material. Any such archival copies that contain or
4 constitute Protected Material remain subject to this Protective Order as set forth in
5 Section 4 (DURATION).

6 14. Any violation of this Order may be punished by any and all appropriate
7 measures including, without limitation, contempt proceedings and/or monetary
8 sanctions.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED: June 7, 2024

11 */s/ Christopher S. Marchese*

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24 Attorneys for Plaintiff FiveStar Gourmet Foods, Inc.

25 DATED: June 7, 2024

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11 Attorneys for Defendant Local Bounti Corp.

12 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

13 DATED: June 12, 2024

14 

15 Honorable Sheri Pym
16 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
[print or type full address], declare under penalty of perjury that
I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California on
[date] in the case of _____ [insert formal name of the case and the number and
initials assigned to it by the court]. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity except
in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print or
18 type full name] of _____ [print or type full
19 address and telephone number] as my California agent for service of process in
20 connection with this action or any proceedings related to enforcement of this
21 Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: